

# **The Energy and Technology Committee**

**Public Hearing, March 15, 2012**

**Office of Consumer Counsel**

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Testimony of Elin Swanson Katz

## **H.B. 5474, *An Act Concerning the Autonomy of the Public Utilities Regulatory Authority***

This bill, like S.B. 415, *An Act Concerning the Operations of the Department of Environmental Protection, the Establishment of a Commercial Property Assessed Clean Energy Program, Water Conservation and the Operation of the Clean Energy Finance and Investment Authority*, has as one of its prime issues the bureaucratic relationship between the Department of Energy and Environmental Protection (“DEEP”) and the Public Utilities Regulatory Authority (“PURA”) and their respective decision-making processes. S.B. 415 promotes the authority of DEEP as compared to PURA and in several places seeks to replace public hearings with undefined “public meetings.” In contrast, H.B. 5474 seeks to give to PURA much of the autonomy enjoyed by the former Department of Public Utility Control (“DPUC”) by establishing that PURA would be within DEEP “for administrative purposes only.”

The Office of Consumer Counsel (“OCC”) is today submitting detailed testimony on S.B. 415 regarding the need to clarify the roles of DEEP and PURA so that we can (1) honor Public Act 11-80’s goal of energy policy centralization in a powerful Department of Energy; while also (2) ensuring that PURA has appropriate power over rates and utility performance such that stakeholders can be assured that PURA’s contested case processes will be just and based on the evidentiary record. OCC refers the Committee to that testimony as part of its testimony for this bill.

OCC is supportive of much of H.B. 5474 and understands the concerns it seeks to address. However, OCC is not certain that the right solution at present is to make PURA an agency that is under DEEP “for administrative purposes only,” (“APO”) as stated in Section 1. There were valid reasons for creation of DEEP and energy policy centralization through Public Act 11-80, and OCC maintains that we can work toward

solutions that clarify the lines of authority between DEEP and PURA, including giving PURA ample authority over many matters traditionally handled by the former DPUC, without going as far as APO status. We should first seek a “middle ground” in this session, and OCC stands ready to assist in the effort in any way.

Toward the above goal, OCC is supportive of Sections 2, and 3, which would ensure that PURA has control over the assignments and administration of its staff, and the disposition of its resources. In the current arrangement, the DEEP Commissioner has direct control over PURA’s staff, organization, assignments, and the disposition of PURA’s resources, and can move or reassign staff without the input of the PURA Directors. With the Commissioner and the Deputy Commissioner in a direct supervisory role over the Directors, there is also the possibility of communications taking place concerning pending cases before PURA. It is clear to OCC that when PURA is in its adjudicatory mode, there should be no *ex parte* communications about a case with any PURA director. More generally, DEEP’s control of PURA’s staff and resources, and the direct supervision of the Directors, creates the appearance that PURA’s decisions may be based on something other than the evidence in the record. We need ratepayers, utility companies, power plant developers, retail suppliers, environmental groups, and all other stakeholders to have complete confidence in the integrity of PURA’s decision-making processes.

For the same reason, OCC supports Section 19, which would ensure that PURA Directors are independent and can only be fired for cause, just as was the case for the Commissioners of the former DPUC.

OCC is also supportive of the first part of Section 4, which would give PURA authority over the adoption of regulations governing rate-making, utility operations, and electric suppliers, which matters traditionally were handled by DPUC and as to which PURA has maintained expertise. However, as to the latter part of Section 4, which would give PURA sole authority over standards for cogeneration technology and renewable fuel resources, such regulations might be more appropriately advanced by DEEP under the new paradigm.

OCC is also generally supportive of Sections 6 and 7 of H.B. 5474, which would make the Commissioner of DEEP a member of the Energy Conservation Management

Board (“ECMB”) and have PURA approve the annual Conservation and Load Management (“C&LM”) Plan. If the DEEP Commissioner is a member of the ECMB and thus involved in developing the Conservation and Load Management (C&LM) Plan, which involves the expenditure of over 100 million dollars, a different authority should be responsible for reviewing and approving the C&LM Plan and for adopting the evaluation, measurement and verification process. By the same token, however, OCC does not agree that Section 6 should say that PURA appoints and convenes the ECMB; instead, we may want to go back to having members of the Board appointed by various elected officials, so that PURA is not both selecting the members of ECMB and also approving the Plan.

With respect to the portion of Section 7 of H.B. 5474 that amends 16-245m(d)(1), OCC believes that there should be one additional change to the existing language that would require that PURA, in its review of the C&LM Plan, “shall”, instead of “may”, hold a public hearing in the manner of Chapter 54, the Uniform Administrative Procedure Act (“UAPA”), except not subject to appeal.

Section 17 of H.B. 5474 creates a new Division of Enforcement within PURA, a concept with which OCC agrees. However, there are some procedural issues with the provision as written that should be resolved. First, the new Division would be within PURA, but would have jurisdiction over enforcement of Siting Council orders and regulations. This appears to create a conflict, as the Siting Council is within DEEP for administrative purposes only. Second, the new Division is given the authority to conduct investigations and hold hearings to investigate various parties, but there is no reference to the appointment of a hearing officer. Moreover, Section 16-41 would require PURA to conduct its own full contested proceeding in addition to the Division of Enforcement’s, creating the possibility that there would be duplicative hearings. OCC suggests that it would be more efficient to create a Division of Enforcement with dedicated staff as a branch of PURA, but that all of its proceedings should be conducted like any other contested PURA proceeding, with PURA Directors responsible for the conduct of the proceeding under Title 16 and Chapter 54.

Section 18, regarding the Integrated Resource Plan (“IRP”), maintains the language requiring DEEP to hold a public hearing on the plan pursuant to Chapter 54,

but also requires PURA to initiate a docket to approve or reject the IRP. This will likely add to the already existing DEEP and PURA role confusion with respect to the IRP. As further stated in OCC's testimony regarding Raised Bill No. 415, OCC believes that DEEP should be responsible for reviewing the IRP in a proceeding that includes a public hearing with UAPA protections, although not subject to appeal. PURA should then be responsible for conducting contested proceedings to review and implement any recommendations from the IRP that require additional ratepayer funding and any recommended procurement of additional resources.

OCC is generally supportive of the remaining provisions of H.B. 5474 and particularly Section 11, which would clarify PURA's authority to regulate those engaged in electric submetering.

OCC would also respectfully suggest that a new section be added to H.B. 5474 that would amend Section 16-2c, which places the Division of Adjudications, including those lawyers formerly employed by DPUC, within DEEP. Although it is appropriate for there to be lawyers in DEEP that report to the DEEP Commissioner, PURA also needs to have its own counsel that report solely to the PURA directors because of PURA's responsibility to conduct contested case hearings. As an attorney, I see significant problems and potential conflicts with attorneys representing one branch of an agency but reporting to and being supervised by another.